

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EMILY MORRISON,

Plaintiff,

USDC SDNY
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DOC #:
DATE FILED: 5/15/2024

ORDER

-against-

21-CV-1859 (SHS) (KHP)

SCOTIA CAPITAL (USA) INC.,

Defendant.

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KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE

The parties appeared before the undersigned at a case management conference on May 14, 2024. As discussed at the conference and set forth more fully on the record:

- By Friday, May 17, 2024, counsel for the Plaintiff will file letters, or affidavits, in the pending proceedings in other Districts to enforce the subpoenas seeking Plaintiff's medical records, to indicate that Plaintiff does not oppose the requests;
- By Friday, May 17, 2024, Plaintiff shall provide Defendant a list of all social media accounts that Plaintiff uses and indicating what platform(s) the Plaintiff "posts" material on;
- Plaintiff shall produce tax returns for the years 2016 to the present (which may be partially redacted but which shall show all earnings (including passive earning from self-employment, employment and business income of Plaintiff), by Friday May 24, 2024;
- By Tuesday, May 28, 2024, the Plaintiff shall submit a proposed schedule of all depositions;

- By Thursday, June 14, 2024, the Defendants will identify all depositions they intend to notice other than Plaintiff's;
- By Thursday, June 14, 2024, the parties shall submit a joint status letter to provide an update on discovery progress and the scheduling of depositions;
- Plaintiff's deposition must be taken by June 25, 2024;
- Defendants' independent medical examination of Plaintiff must be completed by July 31, 2024;
- All fact witness depositions must be complete by August 30, 2024;
- Affirmative expert reports are due by August 30, 2024, rebuttal reports are due by September 27, 2024;
- All expert depositions must be complete by October 11, 2024;
- Defendant's request to compel production of Plaintiff's fee arrangement with counsel is DENIED;
- Plaintiff's request for documents related to candidates interviewed for the role of salesperson or Sales Manager from 2017 to 2020 is GRANTED;
- Plaintiff's request that Defendant reproduce documents in a way which indicates which request they are responsive to is DENIED because Defendant produced ESI in the way the records are normally maintained;
- Defendant's request for the records of the Plaintiff's marriage counselor is GRANTED. Plaintiff has put her emotional state at issue in this litigation, the records are therefore relevant, and Plaintiff has waived any applicable privilege.

See Tavares v. Lawrence & Mem'l Hosp., No. 3:11-CV-770 CSH, 2012 WL

4321961, at *10 (D. Conn. Sept. 20, 2012)(denying motion to quash subpoena for martial therapist's records). However, Plaintiff's spouse is a non-party who has not put his emotional state at issue, and therefore he has not waived any relevant psychotherapist privilege. The parties are reminded that, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub.L. No. 104–191, 110 Stat.1936, 45 C.F.R. § 164.512, *et seq.*, information exchanged between them during discovery is not subject to a First Amendment or common-law public right of access. Thus, discovery involving the Morrison's marriage counseling records should in no way disclose these records to the public. See *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984) ("pretrial depositions and interrogatories are not public components of a civil trial"). Moreover, should the parties move to admit the marriage counseling records into evidence at trial, the Court may, if appropriate, entertain motions to seal if such sealing is narrowly tailored to serve those reasons, consistent with applicable case law.

The Clerk of the Court is respectfully directed to terminate the motion at ECF No. 79.

SO ORDERED.

Dated: May 15, 2024
New York, New York

Katharine H Parker

KATHARINE H. PARKER
United States Magistrate Judge